9259

SUPREME COURT OF THE UNITED STATES.

No. 167.

THE UNITED STATES, APP'TS,

vs.

AGUSTIN OLVERA.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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Office of the Board of Commissioners to ascertain and settle the private land claims in the State of California.

Be it remembered, that on this sixth day of October, anno domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Agustin Olvera for the place named "Cuyamaca," was presented and ordered to be filed and docketed with No. 375, and is as follows, to wit, (vide page 3 of this transcript;) upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *October* 16*th*, 1853.

In case No. 375, Agustin Olvera, for the place named Cuyamaca, the deposition of Santiago E. Arguello, a witness in behalf of the claimants, taken before Commissioner Hiland Hall, with documents marked H. H., Nos. 1 and 2, annexed thereto, was filed, (vide page 5 of this transcript:)

LOS ANGELES, *November* 4*th*, 1852.

In case No. 375, Agustin Olvera for the place named Cuyamaca, the deposition of Hugo Reid, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, with documents marked H. H., Nos. 1 and 2, and translations thereof marked "B," annexed thereto, was filed, (vide page 8 of this transcript.)

SAN FRANCISCO, *August* 18*th*, 1853.

Case No. 375 called. The counsel for the claimant read the evidence, argued, submitted, and taken under advisement:

SAN FRANCISCO, *April* 4*th*, 1854.

In the same case, Commissioner R. Aug. Thompson delivered the opinion of the board rejecting the claim, (vide page 29 of this transcript.)

SAN FRANCISCO, *Aug.* 15*th*, 1854.

In the same case, on motion of the U. S. law agent, the following order was made, to wit, (vide page 34 of this transcript:)

Petition.

To the honorable the board of U. S. land commissioners, appointed to settle private land claims in California.

The petition of Agustin Olvera respectfully showeth, that on or about the 11th day of August, 1845, Pio Pico, then senior member of the departmental assembly and governor ad interim of the same, in the name of the Mexican nation, by virtue of the colonization laws of August 18th, 1854, the regulations of Novr. 21st, 1828, the various laws of Mexico, the customs and usages of the country affecting grants of land in California granted in full property unto your petitioner, the tract of land and rancho known by the name of Cuyamaca, situate in the then jurisdiction of San Diego, containing eleven Spanish square leagues of land, as designated, bounded, and described in the papers and maps in the archives now in the office and custody of the U. S. surveyor general for California, as well as the original papers and maps in the possession of your petitioner, copies of all of said papers and maps being herewith filed, to which your petitioner prays leave to refer as part of this petition.

Your petitioner further showeth, that he petitioned Jose A. Estudillo, then first justice of the peace, and its jurisdiction, requesting said Estudillo to place your petitioner in juridical possession of said tract of land, called Cuyamaca; that on about the first day of April, A. D. 1846, the said Jose A. Estudillo made official certificate of the reasons why he could not place your petitioner in judicial possession of said lands, and further certified to his knowledge of said tract of "Cuyamaca," and that the same was in accordance with the map in the archives in the custody of the U. S. surveyor general for California, and the certified copy now in the possession of your petitioner; that a copy of said certificate and map is herewith filed, and to which your petitioner prays leave to refer as part of this petition.

And your petitioner further showeth, that the said grant was approved by the departmental assembly of California, on or about the 29th day of August, A. D. 1839, as appears by an original paper now in possession of your petitioner, ready to be produced and proved; that a copy of the same is herewith filed, to which your petitioner prays leave to refer as part of this petition. There is no conflicting claim thereto known to your petitioner; and said lands have not been surveyed by the U. S. surveyor general for California.

The evidence upon which your petitioner relies in this case are the records of this grant, papers and maps in the office and in the custody of the U. S. surveyor general for California, original papers and maps in the hands of your petitioner relating to said lands; copies of all said papers and maps are herewith filed,

and your petitioner prays leave to refer to the same as part of this petition, and the testimony of witnesses to be produced before your honorable board, respectfully submitted for such action as the justice and nature of the claim may require.

E. O. CROSBY,
Of Counsel for Claimant.

Filed in office Oct. 6th, 1852.

GEO. FISHER, *Sec.*

Deposition of Santiago E. Arguello.

OFFICE OF THE U. S. LAND COMMISSION,
Los Angeles, October 16th, 1852.

On this day before Hiland Hall, one of the commissioners for ascertaining and settling private land claims in California, came Santiago E. Arguello, a witness offered in behalf of the claimant, Agustin Olvera, whose petition is No. 375 on the docket of the board, and was duly sworn; his evidence being given in Spanish, was interpreted by the secretary. The U. S. associate law agent was notified and attended. In answer to questions propounded by claimant, the witness testified as follows:

My name is Santiago E. Arguello; I am thirty-nine years old; I reside in San Diego; I am a native of Santa Barbara, California, and have lived at San Diego since 1818; I have known Agustin Olvera since the year 1834; I am acquainted with the tract called "Cuyamac;" it contains about nine or ten "sitios;" it is situated about ten leagues east of the *of* San Diego; it was granted to Don Agustin Olvera in 1845 or 1846; I am acquainted with Jose Matias Moreno; he was Secretary of State (Secretario del despacho) in 1845; I am acquainted with his handwriting, and have seen him write. The paper now shown to me and marked H. H. No. 1, and purporting to be a map of Cuyamaca, on which there is a certificate with the signature of Jose Matias Moreno, I have carefully examined; I believe the said signature of the said Jose Matias Moreno to be genuine; I have examined the said map and certificate, and have no doubt that they are genuine papers, and were made at the date which they bear. The said map is sufficiently accurate to distinguish the tract in question. The names of particular spots that appear on its face are well known names of particular localities. The boundaries can be recognized by the help of said map; I have frequently been on said tract and have examined it, and know these facts from personal knowledge. A short time, six months perhaps, after the grant to said Olvera, the latter, who then lived at Los Angeles, made a contract with a German, who was known amongst us by the name of Cesario, for the occupation of Cuyamaca. The said German actually repaired the said tract, with servants and

some horses of Olvera; he applied to me for tools and oxen, which I lent to him; he lived on the tract about three months; I was informed and believe that he there at that time built a small house and corral, and by the help of saws which he procured from me, got out some timber for building on a larger scale; he was still at work upon said tract when Captain Dupont arrived at San Diego. At this time I was at the head of a volunteer force in that neighborhood. Said Cesario, who was reputed an American, became alarmed at his isolated situation during hostilities, and came to claim my protection; I enlisted him in my company. Cuyamaca being thus unprotected, the Indians fell upon it and robbed or destroyed all they found. Some property I had there was thus lost. The force of volunteers which I commanded was a force organized under my command by myself by virtue of a commission as captain issued to me by Commodore Stockton. There has been no safety from the time of the said abandonment of Cuyamaca to make any attempt at re-occupation. Many ranchos in that neighborhood have been necessarily abandoned. Cuyamaca is not far from Agua Calientes, which an Indian force attacked and plundered a short time since.

I have been acquainted with Jose Antonio Estudillo since the year 1820; I have seen him write and sign his name; I know his handwriting. The paper now shown to me, marked H. H. No. 2, is in the handwriting of said Estudillo, is genuine, and was made at the time of which it bears date. Said Estudillo was first justice of the peace of San Diego, and as such competent to give possession. I was present when Olvera applied for the juridical possession of Cuyamaca.

The circumstances alleged in said paper as an excuse for not complying with said request of Olvera was according to the truth. The high mountains around Cuyamaca are covered with snow at that time of the year, and the then recent rains had rendered this tract impassable.

It was a short time after this application to Estudillo, that the aforementioned occupation by Olvera's agent took place, and soon after that the U. S. sloop of war Cyane, Capt'n Dupont, came to San Diego. The magistrates all resigned upon the U. S. flag being raised, and I was appointed justice of the peace. Olvera renewed his application to me just as I returned to San Diego. After making several deliveries of possession of ranchos, my occupation did not permit me to return again to that neighborhood, and I was obliged to decline.

In answer to questions by associate law agent, the witness says that the German took some stock on the place, which were lost, when he was obliged to leave. From that period to this no attempt to occupy the land has been made by the claimant or any one else in consequence of the hostility of the Indians.

SANTIAGO E. ARGUELLO.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Oct. 16th, 1852.

GEO. FISHER, *Sec.*

Deposition of Hugo Reid.

LOS ANGELES, *November 4th*, 1852.

On this day, before Com'r Hiland Hall, came Hugo Reid, a witness in behalf of the claimant, Agustin Olvera, (petition No. 375,) and was duly sworn, his evidence being given in English. The U. S. associate law agent was present.

In answer to inquiries by counsel for the claimant, the witness testified: My name is Hugo Reid, my age is 41 years, and I reside in San Gabriel, in the county of Los Angeles; I am acquainted with the handwriting and signatures of Pio Pico, and Jose Matias Moreno, and Jose Ma. Covarrubias. A paper is now shown me purporting to be a grant to Agustin Olvera, of a tract of land called Cuyamaca, dated 11th of August, 1845. The signatures of Pio Pico and said Covarrubias upon said paper, I believe to be genuine; it is hereto annexed, and marked H. H. No. 1. A paper is also shown me purporting to be a testimonial of approval of the departmental assembly of said grant, dated 6th June, 1846. The signatures of said Pico and Moreno on said paper I believe to be genuine; it is hereto annexed, and marked H. H. No. 2.

HUGO REID.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Nov'r 4th, 1852.

GEO. FISHER, *Sec'ry.*

[1 S. D. K.]

Espediente promovido por Dn. Agustin Olvera, del parage de Cuyamaca en la jurisdicion de San Diego y que le fue concedido en propiedad por el superior govierno departamental en el ano de 1845.

464.

[2 S. D. K.]

Exmo. Sor. Governador:

Agustin Olvera, Mejicano pornacimiento establecido en este departamento ante la recta justificacion de V. E. y como mejor

proceda en drecho respetuosam'te digo. Que teniendo dispuesto hace bastante tiempo mudar mi do mitilio al pueblo de San Diego lo que pretendo verificar pronto y sabedor de que á distancia de diez y seis leguas de alli poco mas ó menos se halla un terreno totalmente baldio, ya por su distancia y ya por encontrarce a la parte de la sierra conocido con el nombre de Cuyamaca y concid-erando que de su ocupacion resultará mas provecho que del abandono que hoy tiene: suplico á V. E. me conceda si lo tubiese á bien para mi beneficio personal y el de mifamilia la propiedad de el con arreglo á la ley de colonizacion del ano de 24 y de cuyo terreno presentaré oportunam'te el disorio respectivo por ne poderlo hacerlo ahoramismo con esta, á virtud de impedirmelo las atenciones de mi destino, pero cumpliré con este requisito como dejo indicado y Juro Pa. Sirviendose dispensar me el uso de papel comun por falta de sellado correspondiente en el lugar.

Angeles, Junio 5 de 1845.

AGUSTIN OLVERA.

ANGELES, *Junio* 1o *de* 1845.

Pase al Sor. D. Joaquin Ortega para que como colindante diga lo que sepa sobre el particular y al alcalde de San Diego, para que de el informe respectivo.

PICO.

SAN LUIZ REY,
Junio 18 *de* 1845.

[3 S. D. K.] El terreno conocido con el nombre de Cuyamaca Ct. Colindante con Sta. Ysabel y se halla actualmente baldio y se estiende y se estiende hasta milcuatay y parte del valle de las viejas es cuan fo puedo decir en con secuencia á lo que se me pregunta de conformidad con el superior decreto que antecede.

JOSÉ JOAQN. ORTEGA.

Exmo. Señor.

Ansento al decreto superior de V. E. de 1o de Junio, pp'do que antecede: El parage que solicita el interesado conocido pr. Cuyamaca, es baldio y no pertenece, á particular ni corporacion pues solo se haya havitado por algunos gentiles por lo que aparece que no presenta obstaculo para que si V. E. lo tubiese á bien se sirva concederlo al solicitante.

San Diego, Julio 31 de 1845.

JOSÉ R. ARGUELLO.

[4 S. D. K.]

ANGELES, *Agusto* 11, *de* 1845.

Vista la peticion conque da principio este espediente los in-

formes en el practicados con todo lo demas que se tuvo presente y ber conbino de conformidad con lo dispues to en la ley de 18 de Agosto de mil ochocientos veinte y cua tro y reglamento 21 de No'bre de mil ochocientos veinte ocho se declara al Ciudadano Agustin Olvera dueno en propiedad del parage nombrado Cuyamaca en la jurisdicion de San Diego, librese el titulo correspondiente y en el anotese que cuandose ponga suposecion juridica, formado que sea el diseño correspondiente que original deve correr agregado á este mismo espediente el jues que lo posecione pase al govierno la noticia del numero de sitios que comprenda y somesar esta consecion á la aprovacion de la exma. asamblea departamental.

[5 S. D. K.]

Pio Pico, gobernador Yuterino del departamento de las Californias asi lo mandé decreté y firmé de que doy fé.

PIO PICO.

[6 S. D. K.]

Pio Pico, vocal mas antiguo de la honorable asamblea del departamento de las Californias y gobernador interino del mismo.

Por cuanto el Ciudadano Agustin Olvera ha pretendido para su beneficio personal y el de su familia el parage conocido con el nombre de Cuyamaca en la jurisdicion de San Diego; practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos; usando de las facultades que me son conferidas á nombre de la nacion Mejicana he venido en decreto de este dia concederle el espresado terreno declarandole la propiedad de el por las presentes letras entendiendose d'ha consecion de entera conformidad con las leyes, á reserva de la aprovacion de la exma. asamblea departamental y bajo las condiciones siguientes:

[7. S. D. K.] 1a. Podrá cercarlo sin perjudicar los caminos y servidumbres lo disfrutará libre y esclusivam'te dedicandolo al uso ó cultivo que mas le acomode.

2a. Solicitará del juez respectivo le de la posecion juridica en virtud de este despacho por lo cual se demarcarán los linderos respectivos en cuyo lugar pondrá el interesado las mojoneras nesesarias.

3a. El juez que diese la posecion lo hará medir conforme á ordenanza teniendo cuidado de que al tiempo de dar la posecion se forma el diseño correspondiente y original lo pase al gobierno con la noticia del numero de sitios que comprenda.

En consecuencia mando que teniendose por firme y va ledero el presente titulo se tome razon de el en el libro á que corresponde y se entregue al interesado para su seguridad y demas fines.

[8 S. D. K.]

Dado en la ciudad de los Angeles á once de Agosto de mil ochocientos cuarenta y cinco en este papel comun por falta del sellado. Queda tomada razon de este titulo en el libro á que corresponde.

ANGELES, *Mayo* 8 *de* 1846.

Dado cuenta en secion de hoy con este espediente á la exmo. asamblea departamental se mando pasar á la comision de terrenos baldios.

AGUSTIN OLVERA, *D. S.*

E. S.

[9 S. D. K.] La comision de terrenos baldios á ectaminado con detencion el antecedente espediente promovido por el ciudadano Agustin Olvera relativo al parage de Cuyamac y que le fue concedido pr. el superior gobno. departamental con arreglo á las leyes de la materia en esta virtud pone á la deliveracion de V. E. la proposicion siguiente.

Se aprueba la consecion hecha al C. Agustin Olvera del parage conocido sierra de Cuyamac en la jurisdicion de San Diego en estencion de lo que acienta la condicion 3a. del titulo librado confha. 11 de Ag'to, de 1845, con arreglo á la ley de 18 de Agosto de 1824 y el art'o 5o del reglam'to de 21 de 9bre de 1828.

Sala de comisiones en la ciudad de los Ang's Mayo 22 de 1846.

S. ARGUELLO.

Angeles, Junio 3 de 1846.

En secion de este dia áprobó la exma. asamblea departamental la proposicion del dictamen anterior.

[*For map, see original, page* 14.]

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States, for the State of California, and as such, now having in my office, and under my charge and control, a portion of the archives of the former Spanish and Mexican territory, or department of upper California, do hereby certify that the ten preceding and hereunto annexed pages of tracing paper, numbered from one to ten inclusive, and each of which is verified by my initials, [S. D. K.,] exhibit true and accurate copies of certain documents on file, and forming a part of the said archives in this office.

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1

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, (not having a seal of [L. S.] office,) at the city of San Francisco, this twenty-third day of October, 1852.

SAM'L D. KING,
Sur. Gen'l, Cal.

Filed in office August 8th, 1853.
(Signed) GEO. FISHER, *Sec.*

Translation of exhibit No. 2.

TO HIS EXCELLENCY THE GOVERNOR:

I, Agustin Olvera, a Mexican by birth, established in this department before the righteous equity of your excellency, and in the most approved form of the law, do respectfully say that I have determined, since some considerable time ago, to change my domicil to the town of San Diego, which intention I mean soon to carry out; and I possess information that a distance of sixteen leagues, more or less from that place, there is a tract wholly unoccupied, on account as well of its remoteness as of its being towards the sierra, which tract is known by the name of Cuyamaca. And considering that its being occupied will prove more profitable than the total abandonment in which it now lies, I beseech your excellency to grant it unto me, if it should meet your pleasure, for my personal benefit and that of my family, the ownership of the same, in conformity with the colonization law of the year of '24. I will in due season present a sketch to represent said tract, being prevented from doing so at the precise moment on account of the engagement of my office; but I will comply with the requisite aforesaid. I make oath, &c. Be pleased to excuse my using common paper, there being none of the proper stamp in the place.

AGUSTIN OLVERA.

Angeles, June 5th, 1845.

ANGELES, *June 10th*, 1845.

Let this be forwarded to Senor Don Joaquin Ortega, that he as owner of adjoining premises may state what he knows concerning the subject, and to the alcalde of San Diego, that he may give the appropriate report.

PICO.

SAN LUIS REY, *June 18th*, 1845.

The tract known by the name of Cuyamaca is bounded by the Sta. Isabel, and is absolutely unoccupied, and extends as far as Milcuatar and part of the valley of Las Viejas. This is all I can

state in consequence of the question made to me in consequence of the foregoing superior decree.

JOSE JOAQUIN ORTEGA.

YOUR EXCELLENCY:

In attention to the foregoing superior decree of your excellency of the 10th of June last past, the tract solicited by the petitioner, and known as "Cuyamac," is unoccupied, and does not belong to either individual nor corporation, for it is only inhabited by some heathens; wherefore it appears not to present any obstacle to your excellency's being pleased to grant it to the petitioner, if so minded.

JOSE R. ARGUELLO.

San Diego, July 31st, 1845.

ANGELES, *August 11th*, 1845.

In view of the petition wherewith those proceedings originate, the reports made in the same, together with all other things that were brought forward and were proper to be kept in view, in conformity with the provisions of the law of 18th August, one thousand and eight hundred and twenty-four, and regulations of 21st of November, of one thousand eight hundred and twenty-eight, the citizen, Agustin Olvera, is declared to be owner in full property of the tract called "Cuyamaca," in the jurisdiction of San Diego.

Let the appropriate title be delivered to the party interested, and let it be noted therein, that whenever he may be placed in juridical possession, and the appropriate design may be formed, the original of which must be annexed to these same minutes, the judge delivering possession will forward to the government a notice of the number of sitios it may contain, and let this grant be submitted to the approbation of the most excellent the departmental assembly.

I, Pio Pico, governor ad interim of the department of the Californias, have so ordered, decreed, and subscribed, which I certify.

PIO PICO.

Angeles, May 8th, 1846.

Submitted in session of to-day these minutes to the most excellent the departmental assembly.

Ordered, That it be referred to the committee on waste lands.

AGUSTIN OLVERA, *D. S.*

EXCELLENT SIR:

The committee on vacant lands has examined with care the

following proceedings instituted, on the motion of the citizen, Agustin Olvera, relative to the tract Cuymac, which was granted to him by the superior departmental government, in conformity with the laws affecting the matter; wherefore, it submits to the deliberations of your excellencies the following proposition:

It approves of the grant made to the citizen, Agustin Olvera, of the tract known as sierra de Cuyamac, in the jurisdiction of San Diego, being in extent what is expressed in the 3d condition of the title issued on the date of the 11th of August, 1845, agreeable to the law of the 18th of August, 1824, and article 5th of the regulation of 21st November, 1828.

ANGELES, *June* 3*d*, 1846.

In session of this day, the most excellent the departmental assembly approved the resolution of the foregoing report.

Filed in office August 8th, 1853.

GEO. FISHER, *Sec.*

[H. H. No. 1.]

Pio Pico, vocal mas antiguo de la honorable asamblea del departamento de las Californias, y gobor. ynterno. del mismo.

[L. S.]

Por cuanto el Ciudadano Agustin Olvera ha pretendido para su beneficio personal y el de su familia el parage conocido con el nombre de Cuyamaca en la jurisdicion de San Diego: practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos; usando de las facultades que me son conferidas á nombre de la nacion Mejicana he venido en decreto de este dia en concederle el espresado terreno declarandole la propiedad de el por las presentes letras entendiendose dicha concesion de entera conformidad con las leyes, á reserva de lá aprovacion de la exma. asamblea departamental y bajo las condiciones siguientes:

1a. Podrá cercarlo sin perjudicar los caminos y servidumbres lo disfrutará libre y esclusivamente dedicandolo al uso ó cultivo que mas le acomode.

2a. Solicitará del juez respectivo le de la posecion juridica en virtud de este despacho por el cual se demarcarán los linderos en cuyos lugares pondrá el interesado las mojoneras necesarias.

3a. El juez que diese la posecion lo hará medir conforme á ordenanza teniendo cuidado de que al tiempo de dar la posecion se forme el diseño correspondiente y original lo pase al gobierno con la noticia del numero de sitios que comprenda.

En consecuensia mando que teniendose por firme y va ledero el presente titulo se tome razon de el en el libro á que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en la ciudad de los Angeles á once de Agosto de mil ochocientos cuarenta y cinco en este papel comun por falta de sellado.

PIO PICO,
JOSÉ MA. COVARRUBIAS, *Frio.*

Queda tomada razon de este despacho en el libro respectivo.
COVARRUBIAS.

Filed in office Nov. 4th, 1852.
(Signed) GEO. FISHER, *Secy.*

[*For map see original, between pages* 21 *and* 22.]

Doc. H. H. No. 2, *annexed to the deposition of S. E. Arguello.*

Jose A. Estudillo, Juez 1o. de Paz del Pueblo de San Diego y su jurisdicion.

Certifico que D. Agustin Olvera solicitó de mila pusiera en posecion juridica del parage de Cuyamaca que le fué adjudicado por el superior gobierno y para cuyo fin me manifestó el titulo respectivo: mas á pesar de la buena disposicion que tube no se pudo lograr la practica de este acto a virtud de que como han cido tan continuas las lluvias habidas en la sierra se encuentran aquellos campos casi intrancitables por lo pantanoso de la tierra, pero me consta ya por vista y tambien por mejo res informes adquiridos que el referido parage de Cuyamaca es segun y conforme al diseño formada y siendo y siendo su estencion la de ocho sitios de ganado mayor los que se remidiran tan luego como el tiempo mejore y la tierra presse comodidad á fin de que se haga con la devida exactitud y para la seguridad de la parte de D. Agustin Olvera y satisfaccion del supor. gobno. obsequiando la tereera condicion del despacho doy este en el Pueblo de San Diego en este papel comun por falta de sellado á 1o. de Abril de mil ochocientos cuarenta y seis.

JOSÉ A. ESTUDILLO.

Filed in office Oct. 16th, 1852.
(Signed) GEO. FISHER, *Secy.*

Doc. H. H. No. 2, *annexed to the deposition of Hugo Reid.*

[H. H. No. 2.]

Pio Pica, Gobernador Constitucional del Departamento de las Californias.

[L. S.]

La Exma. Asamblea Departamental en secion del dia tres de Junio ha tenido á bien decretar lo siguiente.

Se aprueba la concesion hecha al ciudadano Agustin Olvera del parage conocido sierra de Cuyamaca en la jurisdicion de San Diego en estencion de lo que acienta la condicion 3a. del titulo librado conf'ha 11 de Agosto de 1845 con arreglo á la ley de 18 de Agosto de 1824 y el arto. 5o. del reglamento de 21 de No'bre de 1828.

Y para resguardo de la parte del ciudadano Agustin Olvera lo hago asi saber. Dado en la ciudad de los Angeles en este papel comun por falta del Sellado á seis de Junio de mil ochocientos cuarenta y seis.

PIO PICO,
JOSÉ MARIAS MORENO, *S. Y.*

Filed in office Nov. 4th, 1852.
(Signed) GEO. FISHER, *Secy.*

Translation, grant, approval, and certificate relating to possession.

Pio Pico, senior member of the hon'l assembly of the department of the Californias, and governor ad interim of the said department.

[L. S.]

Whereas the citizen Agustin Olvera has claimed for his personal benefit, and that of his family, the tract of land known by the name of Cuyamaca, in the jurisdiction of San Diego, the proper proceedings and investigations having just been instituted according to the tenor of laws and regulations, in the exercise of the powers conferred upon me, in the name of the Mexican nation, I have come by decree of this day to concede to him the aforementioned tract, declaring the ownership thereof to be in him by these present letters; this grant being understood to be in entire conformity with the laws under reservation, of the approbation of the most excellent departmental assembly, and the following conditions:

1st. He may fence it without prejudice to the roads and right of way; he shall enjoy it freely and exclusively, devoting it to such use or culture as best may suit him.

2d. He shall petition the judge who has jurisdiction to give him the juridical possession in virtue of this grant. The said judge shall make out the respective boundaries on the lines, whereof the party in interest shall place the necessary land marks.

3d. The judge who may give the possession shall cause it to be measured according to ordinance, taking care that at the time of giving the possession, the sketch of the same be drawn out and forwarded in the original to the government, with information as to the number of sitios it contains; wherefore, I order that the present title being held firm and valid, be entered of record

in the appropriate book, and delivered to the party in interest for his protection and other ends.

Given at the city of Los Angeles on the 11th of August, one thousand eight hundred and forty five, on this common paper, for want of the stamped.

PIO PICO,
JOSE MA. COVARRUBIAS, *Sec'y.*

This grant is entered of record in the appropriate book.
COVARRUBIAS.

Angeles, same date as above.

The plan.

Secretary's office:

[L. S.]

I, Jose Matias Moreno, secretary pro tem. of the government of the department of the Californias, do certify that the plan sketched on the other side of this sheet is a faithful and literal copy of that filed, with the minutes of proceedings instituted with respect to the tract of Cuyamaca, in the office under my charge.

JOSE MATIAS MORENO,
Sec. pro. tem.

Angeles, 9th June, 1846.

I, Jose A. Estudillo, first justice of the peace of the town of San Diego and its jurisdiction, do certify that Don Agustin Olvera made petition to me that I should place him in juridical possession of the tract of Cuyamaca, which was adjudicated to him by the superior government, for which end he exhibited to me the title relating thereto. But in spite of the good intention I entertained, it was not possible to carry such proceeding into effect, because the rains have been so continual in the mountains, that those lands are almost impassible on account of the swampy condition of the soil. But I know as well by personal inspection, as by the best information I could *require*, that the said tract of Cuyamaca is conformable and in accordance with the design drawn, and is of the extent of eight ranges (sitios) for neat cattle, which shall be measured over as soon as the weather improves, and the soil presents facilities for the same to be done with due exactness.

And for security on the part of Don Agustin Olvera, in obedience to the superior government, and in fulfillment of the third condition of the grant, I give this at the town of San Diego, on this common paper, for want of the stamped, on the 1st of April, one thousand eight hundred and forty-six.

JOSE A. ESTUDILLO.

Pio Pico, constitutional governor of the department of the Californias.

[L. S.]

The most excellent departmental assembly in session of the 3d day of June, has saw fit to decree the following:

Approved the grant made to the citizen Agustin Olvera, of the tract known as sierra de Cuyamaca, in the jurisdiction of San Diego, being in extent what is set down in condition 3d of the title granted, under date of 11th of August, 1845, agreeably to the law of 18th August, 1824, and art. 5 of the regulation of the 21st November, 1828. And for protection on the part of the citizen Agustin Olvera, I do make it known.

Given in the city of Los Angeles, on this common paper, for want of stamped, on the 6th of June, one thousand eight hundred and forty-six.

PIO PICO,
JOSE MATIAS MORENO,
Sec. pro. tem.

Filed in office Oct. 6th, 1852.

GEO. FISHER, *Sec.*

Opinion of the board, by Commissioner R. Aug. Thompson.

"Cuyamaca" claim for 11 leagues of land in San Diego county.

AGUSTIN OLVERA
vs.
THE UNITED STATES. } Case No. 375.

This claim is founded on a grant made by Pio Pico, senior member of the departmental assembly, and governor ad interim of the department of the Californias, dated the 11th of August, 1845, and approved by the departmental assembly, on the 3d of June, 1846.

The documentary evidence filed in the case, consists of the original grant and certificate of approval, a certified copy of the map contained in the espediente, and a certificate of Jose A. Estudillo, in relation to juridical possession.

The authenticity of all these documents, and the genuineness of the signatures attached to them, are duly proven by the depositions of Santiago E. Arguello and Hugo Reid.

The grant in this case is simply for the tract of land called Cuyamaca, without any description or designation of boundaries, by which the particular parcel of land intended to be granted can be identified, or the quantity ascertained.

The condition of the grant in which the quantity is usually specified, and reference sometimes made to the desino or map

attached to the espediente, contains in this case no such provisions, but directs the judge who shall give the possession to cause the land to be measured according to the ordinance, and a sketch of the same to be drawn out and *forward* in the original to the government, with information of the number of "sitios" (square leagues) it contains.

The first and most material question presented in this case is, whether the description contained in the grant is sufficient to give it validity, and invest the grantee with the right of private property, in any particular parcel of land.

In the case of Blake et al. *vs.* Doherty et al., 5th Wheatons, 359, Chief Justice Marshall lays down the principle: "That it is essential to give validity to a grant, that there should be a thing granted which must be so described as to be capable of being distinguished from other things of the same kind. But it is not necessary that the grant itself should contain such a description, as without the aid of extrinsic testimony, to ascertain precisely what is conveyed. And Chief Justice Taney, in the case of the United States *vs.* King et al., says it has been settled by repeated decisions of this court. And in cases, too, where the instrument contained clear words of grant, that if the description was vague and indefinite, and there was no official survey to give it a certain location, it could create no right of private property in any particular parcel of land. (See 3d Howard, pp. 786 and 787, and the cases there cited.)

Again, in 1st *Greenlief* evidence, sec. 301, we find the general principle asserted: That if the land granted be so accurately described, as to render its identity wholly uncertain, the grant is void." Applying those principles to the present case, it is very clear that the title in which this claim is founded, although it might contain words of grant and all the essential formalities required by the law, could convey no right of property to the grantee in the land in question. The name Cuyamaca, by which the land is designated in the grant, is the only description which it contains.

It is true, a grant by the name above might be valid, but to render it so it should be accompanied by reference to some extrinsic evidence, going to show the existence of a locality known by that name, and identifying it by certain and well defined bounds and limits. There is no such evidence in the present case. The proof in that point is as vague and uncertain as the grant itself, and in reference to the quantity, exceedingly contradictory.

The espediente contains a map, a certified copy of which is filed with the proof in the case, which represents the land as an extensive plain in nearly a square form, surrounded on all sides by sierras, or high mountains, and containing, according to the scale of Varas laid down on it, some thirteen or fourteen square

leagues. Santiago Arguello, in his description, states the quantity at nine or ten square leagues.

The justice of the peace, Estudillo, in his certificate in reference to the juridical possession, fixes it at eight, while the claimant, in his petition *to* the land, claims it as containing eleven.

The map is evidently a mere fancy sketch, made probably by one who never saw the land, and with little or no reference to the natural sections of the country where it lies. That it was so considered by the governor when he made the grant, is to be inferred from the fact, that he takes no notice of it whatever, and directs the officer giving the possession to make another from actual measurement, and return it, together with a statement of the quantity of the land, to the government.

The performance of this act was clearly a condition precedent, a compliance with which was essentially necessary to give validity to the grant; without it there was nothing tangible on which it would operate, nothing by which the lands granted could be distinguished from others of the same kind, and no other reference to any extrinsic means of identification by which they could be ascertained and located; until was done, therefore, the grant must be considered incomplete, inoperative, and void.

The Supreme Court has decided in numerous instances that cases of this character must be decided with reference to their condition at the time the change of jurisdiction took place. It has not yet been necessary for this commission to decide from what period this limitation dates, nor is it so in the present case, as there is no evidence to show that this material condition of the grant has even been complied with.

Under the rules of law as laid down by the Supreme Court and quoted above, and the evidence in the case, we are led to the conclusion that the grant is void, for uncertainty, and no right has ever vested in the claimant under it.

The claimant has introduced the certificate of the justice of the peace to whom he applied for the juridical possession and measurement, setting forth certain reasons why he was prevented from giving it.

From the views above presented, it is apparent that this paper is not entitled to any weight or consideration in the decision of the case.

It has already been shown, that the act required by the 3rd condition, the grant was a condition precedent, and its performance undisputably necessary to give it validity. Whether, therefore, the failure of the claimant to comply with it was occasioned by his misfortune or his fault, cannot in any degree influence or control the legal effect resulting from it. The claim is therefore rejected.

Filed in office April 4th, 1854.

GEO. FISHER, *Sec.*

Decree of Rejection.

Case No. 375.

AGUSTIN OLVERA *vs.* THE UNITED STATES. } Cuyamaca.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioner is not valid, and it is therefore decreed that his application for a confirmation thereof be denied.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office April 4th, 1854.

GEO. FISHER, *Sec.*

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the southern district of California, it is hereby

Ordered, That two transcripts of the proceedings, and of the decisions in this case, and of the papers and evidence upon which the same is founded, be made out and duly certified by the Secretary, one of which transcripts shall be filed with the clerk of the United States district court for the southern district of California, and the other be transmitted to the Attorney General of the United States.

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing thirty-four pages, numbered from 1 to 34, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, and of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 375, on the docket of the said board, wherein Agustin Olvera is the claimant against the "United States" for the place known by the name of "Cuyamaca."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this thirtieth day of October, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

[SEAL.]

GEO. FISHER, *Sec.*

Notice of Appeal.

Clerk's office of the district court of the United States for the southern district of California.

Whereas the commissioners constituted for the purpose of ascertaining and settling private land claims in the State of California, by the act of Congress of the U. S. of America, approved on the 3rd of March, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," did, on the 4th day of April, eighteen hundred and fifty-four, by their decision of that date, decided against the claim presented by the undersigned to the said commissioners, which claim is for land lying in the said southern district, and is number three hundred seventy-five, (375,) on the docket of claims before said board; and the said claimant being desirous that the said district court should review the said decision, now hereby files this notice in the said clerk's office of his intention to prosecute an appeal, as is provided by the 12th section of an act entitled "An act making appropriations for the civil and diplomatic expenses of the government for the year ending the 30th of June, 1853, and for other purposes," which said act was approved on the 31st of August, 1852.

AGUSTIN OLVERA,
By E. O. CROSBY,
Of Counsel.

To the clerk of the U. S. district court
of the southern district of California, 5th April, 1854.

Filed April 10, '54.

A. S. TAYLOR, *Clk.*

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,

WASHINGTON, 17*th January*, 1855.

AGUSTIN OLVERA
vs.
THE UNITED STATES. } 375.

You will please take notice, that in the above case decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings, in which was received in this office, on the 30th day of October, 1854, the appeal in the district court of the United States for the district of California, will be prosecuted by the United States.

CUSHING, *Attorney General.*

Order to take further testimony.

U. S. district court, southern district of California.

Transcript No. 375.

AGUSTIN OLVERA, appellant,
vs.
THE UNITED STATES, appellee. } No. 124.

On motion of claimant's counsel, with the assent of the district attorney of the U. S., it is ordered that further testimony may be taken in this case by either party.

E. O. CROSBY,
Of Counsel for Claimant.
P. ORD, *Dist. Atty.*

Dated Los Angeles, Sept. 27th, 1855.

Filed Sept. 27th, 1855.

C. E. CARR, *Clk.*

Deposition of Jose Joaquin Ortega.

THE UNITED STATES, appellees,
ads.
AGUSTIN OLVERA, appellant. } No. 124.

Deposition of Jose Joaquin Ortega, a witness on the part of appellee, taken before me, Chas. E. Carr, U. S. commissioner for the southern dist. of California, at the city of Los Angeles, Sept. 28th, 1855.

Present: P. Ord, att'y of the United States, and E. O. Crosby, att'y for appellant. Wm. G. Dryden was sworn as interpreter.

Jose Joaquin Ortega, being by me duly sworn, answers as follows:

Ques. 1. What is your name, age, and place of residence?

Ans. My name is Jose Joaquin Ortega; my age 54 years; my residence, in the county of San Diego.

Ques. 2. Do you know the rancho of Cuyamaca; if yea, where is it situated, and what are its boundaries? (Objected to by U. S. att'y as regard proof of boundaries.)

Ans. I know the ranch of Cuyamaca; it is situated in the county of San Diego, about ten or twelve leagues from the town of San Diego, in a northerly direction from San Diego; it is bounded on the south by the Portosuelo, which opens into the valley of the Viejas; on the north by the sierra of Cuyamaca and Yquai; on the east by the sierra of Jacum; on the west by the ranch of Santa Ysabel, following the low hills until it reaches the southern boundary.

Ques. 3. How long have you known the ranch of Cuyamaca?

Ans. I have known it since the year 1829.

Ques. 4. What have been your means of knowing said rancho?

Ans. At one time I resided at the adjoining ranch of Santa Ysabel; I have been over the ranch frequently, and I know the boundaries from personal observation.

Ques. 5. Is the rancho Cuyamaca a well known and notable location?

Ans. Yes it is.

Ques. 6. What do you know of its occupation by Agustin Olvera and servants?

Ans. All that I know is, that I saw mares driven there, and know that they belonged to Don Agustin Olvera; I don't remember the time.

Ques. 7. Was it before or after the occupation of the country by the United States troops?

Ans. It was before.

Ques. 8. About how long previous?

Ans. I think it was about 1842 or 1843.

Ques. 9. Were there any houses or corrals built upon the ranch by Olvera or persons in his employ?

Ans. I do not know.

Ques. 10. Do you know Jose A. Estudillo, and where does he now reside?

Ans. I knew him; he is dead; he died about two years ago in San Diego.

Ques. 11. State what office, if you know, which he held under the Mexican government in 1844, '45, and '46?

Ans. In '44 I don't know; but in 1846 I think he was a justice of the peace for the jurisdiction of San Diego; he exercised the functions of a justice of the peace.

Ques. 12. Do you know of Olveras having any other cattle beside the mares you spoke of?

Ans. I do not.

Cross-examined by U. S. att'y.

Ques. Why was the place called Cuyamaca?

Ans. It was called so by the Indians from the earliest times.

Ques. Did the Indians live on the place in rancherias; if yea, state where they were?

Ans. Yes; some lived in Yuata in a rancheria, and at Yquai; there were the permanent rancherias.

Ques. How far apart were those two rancherias?

Ans. About five leagues, more or less.

Ques. Do you know the place of Cuyamaca?

Ans. Yes.

Ques. Was there not a place near the rancheria of Yquai called Cuyamaca?

Ans. I do not know of any particular rancheria called

Cuyamaca; Yquai and all the country around there I know as Cuyamaca.

Ques. Was there or not a rancheria on the land called Cuyamaca?

Ans. I have heard it said by the Indians that in early times there was a rancheria called Cuyamaca.

Ques. Do you where *the* that rancheria was located?

Ans. It was at the foot of the hill called Cuyamaca.

Ques. In what direction was it from this hill?

Ans. It was towards where the sun rises.

Ques. In what direction is the rancheria of Yquai from the rancheria of Cuyamaca?

Ans. It is very near towards the south.

Ques. Do you know the names of any other places on the land besides those you have before stated?

Ans. I do not remember.

Ques. When were you last on the land?

Ans. In the year 1845.

Ques. Was it inhabited at that time by any person?

Ans. It was not.

Ques. Did you ever see a map of the ranch; if yea, when did you first see it?

Ans. I have never seen any before until now, when it was shown me on the examination in chief by claimant.

Ques. Was this place of Cuyamaca ever occupied as a ranch with cattle; if so, by whom, and when?

Ans. I was told it had been occupied long ago, before I was born, by the mission of San Diego.

Ques. In 1845, when you went out to the place, were the rancherias occupied by Indians; if so, by about how many?

Ans. They were by about seven or eight families.

Ques. Did you ever see any bands of breeding mares occupying the ranch; if yea, when, and in what manner?

Ans. I never have. JOSE JOAQN. ORTEGA.

Sworn to and subscribed before me, this 28th day of Sept., 1855. C. E. CARR, *U. S. Com'r.*

Filed Sept. 28th, A. D. 1855.

C. E. CARR, *Cl'k.*
By JOHN A. ROSS, *Dep.*

Stipulation.

United States district court for the southern district of California.

Appeal by claimant No. 375, in land commission.

AGUSTIN OLVERA
vs.
THE UNITED STATES. } No. 124.

In this case, it having been ordered by the court that the tran-

script be returned by the clerk of this court to the land commission, in order that the same may be amended, it is hereby stipulated and agreed that no right of the United States or of the claimant is to be affected by said order in any respect.

Los Angeles, Oct. 5th, 1855.

E. O. CROSBY,
Of Counsel for Claimant.
P. ORD, *Dist. Att'y, U. S.*

Filed Oct. 5th, 1855.

C. E. CARR, *Cl'k.*
By J. W. ROSS, *Dep'y.*

Order.

U. States district court for the southern district of California.

"Cuyamaca."

AGUSTIN OLVERA
vs.
THE UNITED STATES. } No. 124.

In this case, it being suggested by counsel for appellant that the transcript of the record from the land commission is imperfect, it is ordered by the court, the district attorney being present and consenting thereto, by stipulation, that the original transcript be returned to the office of the secretary of the commissioners by the clerk of this court, that said transcript may be amended, or that a perfect copy of the original document may be submitted to this court.

Filed Oct. 5th, 1855.

C. E. CARR, *Cl'k.*
By J. W. ROSS, *Dep'y.*

Petition.

In the United States for the southern district of California.

Transcript No. 375.

AGUSTIN OLVERA
vs.
THE UNITED STATES. } No. 124.

To the Honble. Isaac S. K. Ogier, judge:

The petition of Agustin Olvera, the claimant and appellant in this cause, respectfully represents, that on the 6th day of October, A. D. 1852, the appellant, Agustin Olvera, petitioned the board

of U. States land commissioners, claiming eleven square leagues of land called Cuyamaca, in San Diego county, California, and situated within the former jurisdiction of San Diego, California; that on the 4th day of April, 1854, the said commissioners rejected the said claim; that on or about the 10th day of April, A. D. 1854, this appellant, by his counsel, caused a notice to be filed in the office of the clerk of this honble. court of his intention to prosecute an appeal in this cause from the decision of said commissioners; that on the 8th day of November, A. D. 1854, the said commissioners caused a transcript of their proceedings and decision in said cause to be filed in the office of the clerk of this honorable court; and that on the same day the said notice, heretofore filed, and remaining in the office of the clerk of this honorable court, of the intention of this appellant to prosecute an appeal in this cause, became operative as if said notice had been filed on the said 8th day of November, A. D. 1854, the day of the filing of said transcript; that the land claimed is in the southern district of California, and within the jurisdiction of this court, and is of the extent of eleven square leagues, within the natural boundaries of sierra de Cuyamaca on the north, sierra de Jacapim on the east, the sierra and Valle de los Viejas on the south, and the sierra and rancho of Santa Isabel on the west.

Wherefore the said petitioner prays that the said decision of the said commissioners may be reviewed, reversed, and set aside, and that this honble. court will decree the said claim or title to be valid, to the extent of eleven square leagues of land within the boundaries hereinbefore set forth, and set forth in the said transcript and testimony in this cause, provided there be no more than the said eleven square leagues within the said boundaries, but if there be more than the said eleven leagues within the said boundaries, then only to the extent of eleven square leagues; and for general relief in this cause by such other order, judgment, or decree as shall be agreeable to law and equity.

E. O. CROSBY,
Of Counsel for Appellant.

Filed Dec. 10th, 1855.

C. E. CARR, *Clk.*

Summons.

United States of America, southern district of California.

The President of the United States to P. Ord, atty. of the U. S. for the south. dist. of Cal., greeting:

Take notice that a petition, a copy of which is herewith served upon you, has been filed against the United States in the district court of the United States in and for the southern district of California, on the 10th day of December, in the year of our Lord one

thousand eight hundred and fifty-five, at the city and county of Los Angeles, in said district, by Agustin Olvera, praying the said court to review the decision of the U. S. land commissioners, rejecting his claim to a tract of land called "Cuyamacá;" and that you are required to appear at said court in said city within ten days after the service hereof, if served on you within the county of Los Angeles, and within twenty days, if served on you in the county of San Diego or San Bernardino, and within forty days if served on you in any other county of said State, exclusive of the day of service, and answer said petition, or the petitioner will apply to the court for the relief demanded therein.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Los Angeles, this 11th day of December, A. D. 1855. [L. S.]

C. E. CARR, *Cl'k.*

I served this summons, together with a certified copy of the petition, upon Pacificus Ord, U. S. attorney, by delivering to him personally a true copy of the same, at the city of Los Angeles, in the southern district of California, on the 11th day of December, A. D. 1855.

EDWARD HUNTER,
U. S. Marshal.
Per M. L. GOODWIN, *Deputy.*

Sworn to and subscribed before me this 12th day of December, 1855.

C. E. CARR, *Cl'k.*

Answer.

In the district court of the United States, for the south. dist. of Cal.

Los Angeles, December term, 1855. Honl. Isaac S. K. Ogier, judge.

On appeal from the commission to ascertain and settle private land claims in California. Transcript No. 375.

AGUSTIN OLVERA
vs.
THE UNITED STATES. } No. 124.

The answer of Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States, to the petition of Agustin Olvera, for review of decision of United States land commissioners, says: That he denies all and singular each and every allegation in said petition contained; and further, this respondent denies generally the validity of the al-

leged title of the claimant to the land claimed by him. And the same respondent prays that this honl. court will affirm the decision of the said United States land commissioners in said case, and decree the said alleged title to be invalid, and general relief.

P. ORD,
Att'y of the United States for the south. dist of Cal.

Filed Dec. 4th, 1855.

C. E. CARR, *Clk.*

Affidavit for new trial.

In the district court of the United States, for the southern district of California.

AGUSTIN OLVERA
vs.
THE UNITED STATES. } No. 124.

The said Agustin Olvera, being duly sworn, deposes and says: That he had supposed sufficient evidence had been adduced in this case to identify the land herein claimed, and authorize a confirmation of the same by this court. But the court having rejected the said claim to said land, on account of a want of identity of the same, this affiant says that in the event that the court will open the case by granting a new trial herein, and thereby give the affiant an opportunity to do so, he will produce ample evidence of the identity of the land claimed by the name of "Cuyamaca," its locality, that it has certain and well defined bounds and limits, and quantity; that the testimony to the effect above stated can be procured, before a hearing may be had after the granting of a new trial.

AGUSTIN OLVERA.

Sworn to and subscribed me this 31st Dec., 1855.

C. E. CARR,
U. S. Com'r.

Filed Dec. 31st, 1855.

C. E. CARR, *Clk.*

Motion for rehearing.

In the district court of the United States, for the southern district of California.

AGUSTIN OLVERA
vs.
THE UNITED STATES. } No. 124.

Now, on this day the said claimant comes and moves the court

to grant a rehearing in the above case, upon the ground that the claimant will be able to procure the necessary testimony to meet the objections to the confirmation of the claim of the said Olvera to the place called "Cuyamaca," as will appear by his affidavit, which is the foundation of this motion.

A. THOMAS,
Att'y for Olvera.

Filed Dec. 31st, 1855.

C. E. CARR, *Cl'k.*

Motion and affidavit for continuance.

In the district court of the United States, for the southern district of California.

"Cuyamaca."

AGUSTIN OLVERA, appellant,
vs.
THE UNITED STATES, appellee. } Case No.

And now at this day comes the said appellant, by his attorney, and moves the court that the above cause be continued until the next regular term of this court; said motion is founded upon the following affidavit.

MYRON NORTON,
Att'y for Appellant.

STATE OF CALIFORNIA,
Los Angeles county, ss.

Agustin Olvera, the above named appellants, being duly sworn, says that a new trial was granted in this case on the 31st day of December, A. D. 1855, and that immediately thereafter this deponent sent to San Diego to procure the attendance of material and necessary witnesses, to wit, William Williams, Jose Antonio Pico, and Lorenzo Loto, at this term of this court, in order to define more particularly the natural boundaries of the lands claimed in this case; that said witnesses have not as yet appeared before this court, and deponent believes that he will be unable to procure their attendance at this term of this court; deponent believes and is advised that he has a good and valid title to the lands claimed in this case, and that he will be able to procure the attendance of said witnesses at the next regular term of this court, and that this application is not made for delay, but that substantial justice may be done in the premises.

AGUSTIN OLVERA.

Sworn to and subscribed this 21st day of Feb'y, 1856, before me.

C. E. CARR,
U. S. Com'r.

Filed Feb'y 21st, 1856.

C. E. CARR, *Cl'k.*

Deposition of J. J. Warner.

Deposition of J. J. Warner, taken before C. Sims, United States commissioner for the district of California, at the United States court-house, in the city of Los Angeles, on Friday, the fifth day of December, 1856, at 4 o'clock p. m., by consent and agreement of parties, to be used as testimony on behalf of the claimant, in a certain cause now pending in the U. S. district court, for the southern district of California, being case No. 124 on docket of said court, wherein Agustin Olvera is appellant and claimant, and the United States appellee.

Present: Pacificus Ord, U. S. attorney, and E. A. Crosby, esq., attorney on behalf of the claimant and appellant.

J. J. Warner, being duly sworn, deposes and says: I have resided in California since Oct., 1831, in the counties of Los Angeles and San Diego; am now a resident of the latter county; I am acquainted with the place called "Cuyamaca;" it is situated in the county of San Diego, 55 miles northeasterly from the town of San Diego; I have known it since 1844, having resided within a few leagues of it since that time; it is a tract of land near the summit of the mountain ridge, which separates the waters flowing directly into the Pacific ocean from those flowing directly to the Rio Colorado; the waters of this tract of land flow off southwest of the land. This tract of land was universally known by the inhabitants in that section of country by the name of "Cuyamaca," and it is still known by that name. I have heard it spoken of from the time I came in the country, "1831, as the tract of Cuyamaca." It is at this time a well known tract of land, and can be easily found and identified.

Cross-examined by P. Ord, U. S. att'y.

From the land of San Issabella on the northwest to the lands of Valle Viejas, I should judge to be about (10) ten miles. From the mountain of San Felipe on the northeast in a southwesterly direction, about 9 or 10 miles. There is a prominent mountain, well known as Cuyamaca, lying on the northeast border of this tract.

J. J. WARNER.

Sworn and subscribed to before me this 5th day of Dec., 1856.

C. SIMS,
U. S. Commissioner.

STATE OF CALIFORNIA,
County of Los Angeles, ss.

I, C. Sims, United States commissioner for the district of California, do hereby certify that the foregoing deposition of J. J. Warner, was taken before me in accordance with the request and agreement of said attorneys, at the United States court-house, in the city of Los Angeles, State of California; that the said J. J. Warner was by me duly sworn according to law, as a witness in said cause in the captain of this deposition mentioned, and after being so sworn, his testimony was by me reduced to writing in his presence, and that of the said attorneys, and after having been by me carefully read to him, and by him corrected as he desired, was by him signed in my presence.

In testimony whereof, I have hereunto set my hand and private seal, (there being no official seal,) this 5th day of Dec'r, A. D. 1856. [L. S.]

C. SIMS,
U. S. Com'r for the dist. of California.

Filed this 8th day of Dec., 1856.

C. SIMS, *Cl'k.*

Deposition of Jose Anto. Carrillo.

AGUSTIN OLVERA, appellant,
vs.
THE UNITED STATES, appellee. } Case No. 124.

Deposition of Jose Antonio Carillo, taken before C. Sims, United States commissioner for the district of California, at the United States court-house in the city of Los Angeles, on Tuesday, the 20th day of January, A. D. 1857, at 10 o'clock a. m. of said day, on behalf of the appellant, by the consent and agreement of the *attornies* of the parties, to be used as testimony in a certain cause now pending in the U. S. dist. court for the southern dist. of California, being case No. 124 on the docket of the said court, wherein Agustin Olvera is appellant and the United States are appellees.

Present, E. O. Crosby, attorney on behalf of the appellant, and P. Ord, esq., on behalf of appellees.

AGUSTIN OLVERA, appellant,
vs.
THE UNITED STATES, appellees. } No. 124.

Jose Antonio Carrillo, being duly sworn on the part of the appellant, deposes and answers as follows:

Question. What is your name, age, and place of residence?

Ans. My name is Jose Antonio Carrillo; my age is 61 years; I reside in Los Angeles county, and I have lived in this county 36 years, frm 1807 to 1819; I lived in San Diego.

Ques. Do you know a place or rancho called Cuyamaca claimed in this case?

Ans. I do know a place called Cuyamaca; I mean a tract of land.

Ques. Please state where it is situated, and how long have you known it?

Ans. I believe it is in the county of San Diego, near the rancho of Santa Ysabel; it is about 40 years since I knew it, being then upon it at a place where the government had placed a few troops and a quantity of horses.

Ques. What means have you had for knowing this place?

Ans. In or about the year 1816 the military commandant of San Diego having obtained permission from the minister of the mission of Diego to place the horses belonging to that military department upon said tract of land, a number of the inhabitants of San Diego, and myself as one of them, in consequence of the extreme *drouth* and scarcity of pasture, asked and obtained permission of the military commander to put their horses upon said tract of land; I then went there, taking with me about 20 horses, which I delivered into the keeping of the military officer stationed at that place, agreeable to the order of the commandant at San Diego.

Question. Is it a well known locality, and has it been so known for the last 40 years?

Answer. It is a place or tract of land well known by the name of Cuyamaca; it was well known 40 years ago, and has continued to be known *by* that time up to the present time. There is no other tract of land or place in the present county of San Diego except this one which has ever been known by the name of "Cuyamaca."

Cross-examined by U. S. Att'y.

Ques. Have you any interest, present or contingent, in the land claimed in this case?

Ans. No, I have not.

JOSE ANTO. CARRILLO.

Sworn and subscribed to before me this 20th day of Jan'y, 1857.

C. SIMS, *U. S. Com'r.*

I, C. Sims, of the city and county of Los Angeles and State of California, commissioner to take affidavits and bail in civil cases pending in the courts of the United States, and depositions, under the acts of Congress approved Septr. 24th, A. D. 1789, February

20th, A. D. 1812, and March 1st, A. D. 1812, by virtue of my office of clerk of the United States court of the southern district of California, and by special appointment by the United States circuit court for the State and circuit of California, do hereby certify that the foregoing depositions of Jose Anto. Carrillo, was taken before me on the 20th day of January, A. D. 1857, according to the agreement and request of the attorneys of the said parties, at the United States district court-house, in the city of Los Angeles, and State of California, in behalf of the appellant; that the said Jose Antonio Carrillo was by me duly sworn according to law as a witness in said cause in the caption of this deposition mentioned, and after being so sworn, his testimony was by me reduced to writing in his presence, and after having been by me carefully read to him, and by him corrected in every particular as he desired, was by him signed in my presence.

In witness whereof I hereunto set my hand and private seal, (having no seal of office,) this 20th day of January, A. D. 1857.

C. SIMS, *U. S. Com'r.*

Filed this 20th January, 1857.

C. SIMS, *Cl'k.*

Stipulation.

United States district court for the southern district of California.

THE UNITED STATES, appellees, *ads.* AGUSTIN OLVERA, appellant. } Transcript No. 124.

It is hereby stipulated by the United States district att'y and claimant's counsel, that the transcript in No. 250 in this court, John Forster claimant, may be considered and read in evidence on the trial of this cause before the decision, and that a certified copy of the said transcript may be filed in this cause, so soon as the same can be or is made by the clerk of this court.

It is also further hereby stipulated, that the transcript or any part thereof in case No. 357 in this court, Wm. E. P. Hartnell and heirs of claimants, may be considered and read in evidence on the trial or before the decision of this cause; and that a certified copy of the same may be filed in this cause, so soon as the same can be or is made by the clerk of this court.

P. ORD, *Dist. Att'y.*
E. O. CROSBY,
Of Counsel for Claimant and Appellant.

Filed Jan'y 22nd, 1857.

C. SIMS, *Cl'k.*

Decree.

In the district court of the United States for the southern district of California.

December term, A. D. 1857.

Transcript No. 375.

AGUSTIN OLVERA, appellant,
vs.
THE UNITED STATES, appellees. } No. 124.

This cause coming on to be heard on appeal from the decision of the United States board of land commissioners to ascertain and settle the private land claims in the State of California, under an act of Congress approved March 3rd, 1851, on a transcript of the proceedings and decision of said board, and the papers and evidence upon which said decision was founded, and the evidence adduced before this court; and it appearing to the court that said transcript and notice of appeal have been duly filed according to law, and counsel for the respective parties having been heard—

It is ordered, adjudged, and decreed that the decision of said board of land commissioners be, and the same is hereby reversed, and that the claim of appellants is good and valid in law, and the same is hereby confirmed to them, as follows: The land of which confirmation is hereby made is situated in the county of San Diego," State of California, called "Cuyamaca," containing eight square leagues of land, and no more, within the boundaries described in the grant and map of said land, and the certificate of Jose Antonio Estudillo, first justice of the peace, dated April 1st, 1846, contained in the transcript, and the testimony on file in this case; provided, that the land of which confirmation is hereby made is of the extent of eight square leagues, and no more, within the boundaries as laid down in said map and grant, if such quantity be therein contained, but if there be a less quantity, then confirmation is hereby made to such less quantity.

This done and signed in open court, this 17th day of March, 1858.

ISAAC S. K. OGIER,
U. S. Dist. Judge.

Order to Appeal.

On motion of E. J. C. Kewen, acting U. S. dist. atty., it is ordered that an appeal be allowed the United States in the following cases, to wit: Nos. 71, 92, 124, 142, 191, 195, 206, 233, 252, 323, 327, 391, and 392.

United States district court, southern district of California.

CLERK'S OFFICE, LOS ANGELES.

I, C. Sims, clerk of the United States district court for the southern district of California, hereby certify the foregoing fifty-five pages, numbered from 1 to 55, both inclusive, to contain a full, true, and correct transcript of the record of the proceedings and of the decision of said court, and the papers and evidence on which said decision was founded, on file in my office in case No. 124 on the docket of said court, wherein the United States are appellants and Agustin Olvera is appellee, for the place called Cuyamaca.

In witness whereof, I hereto set my hand and affix the seal of said court, at the city of Los Angeles, on this 8th day of May, A. D. 1858.

[L. S.]

C. SIMS, *Clerk.*

Pr. JAMES H. COLEMAN, *Deputy.*